

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

JACK UCHITEL

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-0677

Decision No. CU - 5926

PROPOSED DECISION

This claim against the Government of Cuba under Title V of the International Claims Settlement Act of 1949, as amended, was presented by JACK UCHITEL in the amount of \$223,691.08 based upon the loss of his ownership interests in two Cuban enterprises known as Compania de Ropa Palma, S.A. and Inversiones Corrales, S.A. Claimant has been a national of the United States since his naturalization on January 12, 1937.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right, or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated,

intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Claimant, JACK UCHITEL, describes his losses as follows:

30% interest in Palm Clothing Co.	\$188,691.08
33-1/3% interest in Inversiones Corrales, S.A.	<u>35,000.00</u>
	\$223,691.08

On the basis of the evidence of record, the Commission finds that claimant, since prior to 1960, has been the owner of 1,110 shares of \$100 nominal value each (the peso being on a par with the United States dollar) out of the total outstanding shares of stock of Compania de Ropa Palma, S.A., hereafter referred to as Palm Clothing Co., and 225 shares of Inversiones Corrales, S.A.; and further that these shares represented a 30% interest in Palm Clothing Co. and 33-1/3% interest in Inversiones Corrales, S.A.

On October 24, 1960, Palm Clothing Co. was listed as nationalized in Resolution 3 pursuant to Law 851; and Inversiones Corrales, S.A. was listed as nationalized in Acc. 7 of September 13, 1961 pursuant to Law 890. The Commission finds that these firms were nationalized within the meaning of Title V of the Act on the dates they were listed in the Cuban Official Gazette.

Since Palm Clothing Co. and Inversiones Corrales, S.A., were organized under the laws of Cuba, they do not qualify as corporate nationals of the United States as defined under Section 502(1)(B) of the Act as a corporation or other legal entity organized under the laws of the United States, or any State, the District of Columbia or the Commonwealth of Puerto Rico, whose ownership is vested to the extent of 50 per centum or more in natural persons who are citizens of the United States. In this type of situation it has been held that an American stockholder owning an interest in such a corporation may file a claim for the value of his ownership interest. (See Claim of Parke, Davis & Company, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33.)

The Act provides in Section 503(a) that in making determinations with respect to the validity and amount of claims and value of properties, rights, or interests taken, the Commission shall take into account the basis of valuation most appropriate to the property and equitable to the claimant, including but not limited to fair market value, book value, going concern value, or cost of replacement.

The question, in all cases, will be to determine the basis of valuation which, under the particular circumstances, is "most appropriate to the property and equitable to the claimant". This phraseology does not differ from the international legal standard that would normally prevail in the evaluation of nationalized property. It is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider.

Palm Clothing Co.

The record includes a copy of a consolidated balance sheet for Palm Clothing Co. and its subsidiaries as of June 30, 1960 and another balance sheet for Palm Clothing Co. alone as of December 30, 1959 in the Spanish language. These balance sheets were prepared by a firm of Public Accountants in Havana, Cuba. The record also includes a copy of a stock certificate for 1,110 shares to claimant which was cancelled and which claimant states was substituted by a new one issued in the name of his agent and endorsed to him. Further the record indicates that this represented 30% of the capital stock.

Upon consideration of the entire record the Commission finds that the valuation most appropriate to the property and equitable to the claimant is that shown in the balance sheet of June 30, 1960 which reflects the following:

ASSETS

Current Assets:

Cash on Hand and Banks	\$ 66,052.48
Accounts Receivable	291,913.83
Inventory	313,595.42
Merchandise in Transit	4,342.86
Loans to Employees	478.79
Deposits	<u>23,380.00</u>

Total of Current Assets \$699,763.38

Fixed Assets:

	<u>Cost</u>	<u>Reserve:</u>	
Machinery and Equipment	\$73,029.17	\$4,107.52	\$ 68,921.65
Furniture and Fixtures	13,687.48	1,713.54	11,973.94
Delivery Equipment	<u>5,779.66</u>	<u>1,271.53</u>	<u>4,508.13</u>

Total of Fixed Assets 85,403.72

TOTAL OF ASSETS \$785,167.10

LIABILITIES

Current Liabilities:

Taxes Payable	\$ 8,379.67
Commission Payable	4,836.46
Vacations Payable	146.22
Loans Payable	7,000.00
Operation Expenses Payable	5,221.86
Various Debtors and Creditors	105,848.58
Accounts Payable	<u>24,764.04</u>

TOTAL LIABILITIES \$156,196.83

CAPITAL AND SURPLUS

Issued Shares	\$493,000.00
<u>Plus:</u> Surplus	22,912.13
Net Profit	<u>113,058.14</u>

TOTAL CAPITAL 628,970.27

TOTAL LIABILITIES AND CAPITAL \$785,167.10

The balance sheet of June 30, 1960 indicates that the net worth of the Palm Clothing Co. and subsidiaries was the capital stock issued and outstanding (\$493,000.00) plus the surplus (\$22,912.13) and net profit (\$113,058.14) or \$628,970.27.

Accordingly, the Commission finds that claimant suffered a loss in the amount of \$188,691.08, the value of his 30% stock interest in the Palm Clothing Co., as the result of the taking of this business enterprise by the Government of Cuba.

Inversiones Corrales, S. A.

The record reflects that Inversiones Corrales, S.A. was established as a real estate holding company to hold title to the land and building occupied by Palm Clothing Company and its affiliated and subsidiary corporations. The record also discloses that the land was acquired about March, 1959, that thereafter a 3-story loft building of steel and concrete was erected, and that the total cost for land and building was \$105,000.00. The building was located at Calle Suzarte between Santa Catalina and La Palma in the suburb of Quinto Palatino, Havana, and was on a lot of about 3,300 square meters. The record includes a report from abroad, and affidavits by the attorney for Inversiones Corrales, S.A. and Palm Clothing Co. in which he states that the improved realty in question was acquired at a cost of \$105,000.00; that there were 3 stockholders of Inversiones Corrales, S.A. including claimant, each owning 225 shares for which each paid \$35,000.00, and that this corporation had no liabilities. The record also includes affidavits by claimant, by the vice president and general manager of Palm Clothing Co. and by the office manager of Inversiones Corrales, S.A.; blueprints and a copy of the cost estimates for the building; and a copy of the stock certificate for 225 shares to claimant which was cancelled and which claimant states was substituted by a new certificate issued to an agent and endorsed to him.

Based on the entire record the Commission finds that the net worth of Inversiones Corrales, S.A. on the date of loss was \$105,000.00 and that claimant as a holder of one-third of the outstanding shares of the corporation, suffered a loss in the amount of \$35,000.00 as the result of the taking of this corporation by the Government of Cuba.

Summary

The Commission therefore finds that claimant, JACK UCHITEL, suffered the following losses within the meaning of Title V of the Act:

<u>Item</u>	<u>Date of Loss</u>	<u>Amount</u>
Stock interest in Palm Clothing Co.	October 24, 1960	\$188,691.08
Stock interest in Inversiones Corrales, S.A.	September 13, 1961	<u>35,000.00</u>
		\$223,691.08

The Commission has decided that in certifications of loss on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see Claim of Lisle Corporation, Claim No. CU-0644), and in the instant case it is so ordered.

CERTIFICATION OF LOSS

The Commission certifies that JACK UCHITEL suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Two Hundred Twenty-three Thousand Six Hundred Ninety-one Dollars and Eight Cents (\$223,691.08) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement.

Dated at Washington, D. C.,
and entered as the Proposed
Decision of the Commission

28 OCT 1970


Lyle S. Garlock, Chairman


Theodore Jaffe, Comptroller

NOTICE TO TREASURY: The above-referenced securities may not have been submitted to the Commission or if submitted, may have been returned; accordingly, no payment should be made until claimant establishes retention of the securities or the loss here certified.

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g), as amended, 32 Fed. Reg. 412-13 (1967).)